

REMARKS

Claims 1-30 are pending in the present application, of which Claims 1, 8, 16, and 23 are in independent form. For at least the reasons set forth in detail below, Applicants respectfully submit that Claims 1-30 are in condition for allowance.

The Provisional Double Patenting Rejection of Claims 1-30 in view of U.S. Application Nos. 10/802,614 and 10/802,710

In the Office Action, the sole rejection set forth with regard to Claims 1-30 is a Provisional Nonstatutory Obviousness-type Double Patenting (ODP) rejection based on pending application numbers 10/802,614 and 10/802,710 (herein referred to as the “Provisional ODP Rejection”). No substantive prior art based rejections were presented in the Office Action.

As provided in Section 804(I)(B) of the Manual of Patent Examining Procedure (MPEP), a “provisional double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that “provisional” double patenting rejection is the only rejection remaining in at least one of the applications.” As noted above, the only rejection remaining in the present application is the Provisional ODP Rejection. Accordingly, Applicants respectfully submit that the Provisional ODP Rejection be withdrawn, and that presently pending Claims 1-30 be placed in condition for allowance.

The MPEP further provides, that “if ‘provisional’ ODP rejections in two applications are the only rejections remaining in those applications, the examiner should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer.” [MPEP 804(I)(B)(1)]. It stands to reason that, by analogy, since the sole rejection pending in the present application is a provisional ODP

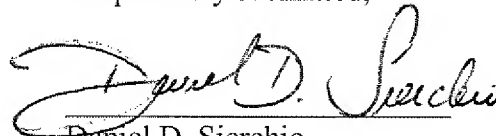
rejection, said rejection should be withdrawn and the present application should be permitted to issue without the need of a terminal disclaimer.

It is further noted that on March 20, 2007, the Applicants filed a response to a previous Non-Final Office Action in which arguments were presented to overcome a then-pending 35 U.S.C. § 102(b) rejection based on a prior art reference. Following consideration of the Applicants' response, the Examiner issued the January 9, 2008 Office Action which withdrew the previous prior art rejection.

In view of the above remarks and the provisional nature of the sole rejection set forth in the Office Action, the Applicants respectfully request withdrawal of the Provisional ODP Rejection, thereby placing Claims 1-30 in condition for allowance.

In the event that any issues remain following entry of this Response, Applicants' attorney respectfully invites the Examiner to contact the undersigned at the telephone number given below. Applicants ask that all correspondence related to this matter continue to be directed to our address listed below.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Daniel D. Sierchio", written over a horizontal line.

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